IN THE

Supreme Court of the United States

JUN 20 1940
CHARLES ELMORE CROPLEY
CLERK

October Term, 1939

No. [redacted] 93

MARGARET B. CARPENTER and L. E. CARPENTER, also known as LEROY E. CARPENTER,

Petitioners,

vs.

ARCHIBALD J. HAMILTON,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1939

No. 1031.

MARGARET B. CARPENTER and L. E. CARPENTER, also known as LEROY E. CARPENTER,

Petitioners,

vs.

ARCHIBALD J. HAMILTON,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

Petitioners complain of a ruling of the California trial court sustaining an objection to certain evidence offered by petitioners in a mortgage foreclosure suit. The ruling complained of was sustained by the Supreme Court of California.

The proffered evidence was rejected because the issues to which said evidence was directed had been once adjudicated in a former action between the same parties. In other words, the ruling was an application of the doctrine of *res judicata,* or estoppel by judgment.

Petitioners were defendants in the foreclosure suit [R. 2]. They were plaintiffs in the former action, which was an action for damages for alleged fraud in the sale to the petitioners of the same property involved in the foreclosure suit [R. 29-34].

The judgment was against petitioners in the fraud action [R. 37, fols. 64-65]. No appeal was taken from said judgment and it had become final prior to the time of the trial of the foreclosure action. By way of defense to the foreclosure action, petitioners, in their answer, made substantially the same allegations of fraud which they had previously made in their complaint in the former action. Compare allegations of answer [R. 10-17] with those of complaint in former action [R. 29-34].

The trial court, upon receiving the judgment roll in the former case, and observing the substantial identity of the issues determined in the former action and the issues tendered by the answer, sustained respondent's objection to the proffered evidence [R. 26-29]. The Supreme Court of California, in sustaining the ruling, said [R. 48, fols. 83-84]:

> "It is the general rule, applicable to the facts of this case [fol. 83], that a final judgment on the merits in a prior action is conclusive between the same parties in a subsequent action involving the same subject matter. Such a judgment was tendered in bar of the present affirmative defenses based on the issues thereby determined. When received in evidence it was conclusive between the parties hereto

upon those same matters. (15 Ruling Case Law, pages 950, 951; Price v. Sixth District Agricultural Ass'n, 201 Cal. 502; Henderson v. Miglietta, 206 Cal. 125; Ernsting v. United Stages, Inc., 206 Cal. 733; Edmonds v. Glenn-Colusa Irr. Dist., 217 Cal. 436; Suisun L. Co. v. Fairfield School Dist., 19 Cal. App. 587.) The issues of fraud very definitely were litigated by these parties in the prior action, both in the trial court and on appeal, and the court properly refused to receive evidence on the same issues alleged in the affirmative defenses of the defendant herein. Its finding on the issue of *res judicata* is supported by the judgment roll in the former action which was introduced in evidence in the present action.

No serious consideration may be accorded the attempted invocation of the maxim that he who comes into equity must come with clean hands. A sufficient answer to the contention in this respect is that the issue of fraud having been adjudicated favorably to the plaintiff herein, there is no place for the application of the maxim."

Petitioners' novel theory is that they should have been permitted to try the issues as to fraud a second time, notwithstanding the final judgment in the former case. They contend that the refusal of the California courts to permit a relitigation of these once-decided factual issues deprived the petitioners of property without due process of law.

Summary Statement of Reasons Why Petition Should Be Denied.

(1) No Federal Question Is Presented Because the Application of the Doctrine of Res Judicata Is Purely a Matter of Local Law.

Northern Pacific R. R. Co. v. Ellis, 144 U. S. 458, 464, 36 L. Ed. 504;

Haley v. Breeze, 144 U. S. 130, 131, 132, 36 L. Ed. 373;

San Francisco v. Itsell, 133 U. S. 65, 33 L. Ed. 570;

Adams v. Louisiana Board of Liquidation, 144 U. S. 651, 36 L. Ed. 578;

Beals v. Cone, 188 U. S. 184, 47 L. Ed. 435;

Western Electrical Supply Co. v. Abbeville Electric Light & Power Co., 197 U. S. 299, 49 L. Ed. 765;

King v. West Virginia, 216 U. S. 92, 54 L. Ed. 396;

Postal Telegraph Cable Co. v. Newport, 247 U. S. 464, 62 L. Ed. 1215.

(2) No Federal Question Was Raised, Claimed, Presented, or Argued Either in the Trial Court or in the Supreme Court of California.

New York Central etc. R. R. Co. v. City of New York, 186 U. S. 269, 46 L. Ed. 1158;

Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291, 47 L. Ed. 480;

Chicago etc. Rwy. Co. v. McGuire, 196 U. S. 128, 49 L. Ed. 413;

Missouri Pacific Rwy. Co. v. Hanna, 266 U. S. 184, 69 L. Ed. 235;

Chandler v. Manifold, 290 U. S. 665, 78 L. Ed. 575.

(3) The Question Presented Is Unsubstantial and Frivolous.

Consolidated Turn Pike Co. v. Norfolk & Ocean View Rwy. Co., 228 U. S. 596, 57 L. Ed. 982;

Seaboard Air Line Rwy. v. Padgett, 236 U. S. 668, 59 L. Ed. 777;

Equitable Life Assurance Society v. Brown, 187 U. S. 308, 47 L. Ed. 190.

(4) The Case Presented Is Not One Involving a Matter of Such Public or General Importance as to Warrant Granting the Discretionary Writ.

Layne & Bowler Corporation v. Western Well Works, Inc., 261 U. S. 387, 67 L. Ed. 712.

I.

No Federal Question Is Presented Because the Application of the Doctrine of Res Judicata Is Purely a Matter of Local Law.

The portion of the opinion of the Supreme Court of California hereinabove quoted shows that the ruling of the trial court and the decision of the Supreme Court involved application of the doctrine of *res judicata,* or estoppel by judgment. The earlier California decisions which are cited in the opinion of the Supreme Court of California clearly demonstrate that the ruling made was in conformity with, and required by, established California law. Indeed, the ruling was strictly in accordance with the doctrine of *res judicata* as it is universally understood and applied. (See 2 Freeman on Judgments, 5th Ed. 1646; also page 1443.)

The decision of the California Supreme Court [R. 46-49] contains no discussion of any federal question. *There is not even the faintest suggestion of a federal question.* Under respondent's next point, it will be shown that no federal question was raised or even remotely suggested either in the trial court or in the Supreme Court of California.

The decisions of this court, cited *supra,* demonstrate that the application of the doctrine of *res judicata* is a matter of purely local law. Clearly, the application of the local law was independently sufficient to sustain the judgment. In *San Francisco v. Itsell,* 133 U. S. 65, this court, speaking through Mr. Justice Gray, used the fol-

lowing language with reference to a judgment of the Supreme Court of California:

> "In the present case, the record of the pleadings, findings of fact and judgment shows that it was unnecessary for that court to decide, and its opinion filed in the case and copied in the record shows that it did not decide, any question against the plaintiff in error, except the issue whether the former judgment rendered against it and in favor of the grantor of the defendants in error was a bar to this action. That was a question of general law only, in no wise depending upon the Constitution, treaties or statutes of the United States. *Chouteau v. Gibson,* 111 U. S. 200 (28:400).
>
> *Writ of error dismissed for want of jurisdiction."*

Likewise in the instant case, the record shows that the sole question involved was whether or not petitioners were estopped by the judgment in the former action from asserting that respondent was guilty of fraudulent misrepresentations. It must be quite apparent that the California courts decided this question correctly, because it is established by the decisions, to which the California Supreme Court referred, that the essential elements of actionable fraud are precisely the same both in law and in equity. Furthermore, said California decisions establish the proposition that a final judgment upon the merits is forever conclusive upon the parties with respect to every material issue of *fact* tendered in the litigation in which the judgment was rendered. *Todhunter v. Smith,* 219 Cal. 690, 28 Pac. (2d) 916. Therefore, the California Supreme Court correctly said that there was no place for the application of the maxim that "he who comes into equity must come with clean hands."

II.

No Federal Question Was Raised, Claimed, Presented, or Argued Either in the Trial Court or in the Supreme Court of California.

The record before this court shows that the existence of a federal question was not in any way claimed or asserted either in the trial court or the Supreme Court of California. The proceedings in the trial court with reference to the ruling complained of are in the record [R. 26-29, fols. 45-50]. Not one word will be found in the record to indicate that there was the faintest hint or suggestion made in the trial court that any right, privilege, or immunity under the constitution or laws of the United States was involved.

As this court said in *Beals v. Cone,* 188 U. S. 184, 188, with reference to a judgment of the Supreme Court of Colorado:

> "And in the opinion of the supreme court, outside of the matters of estoppel and *res judicata* before referred to, there is nothing to even suggest that it was requested to consider any question of a title, right, privilege, or immunity under the constitution or laws of the United States."

This court further said, in dismissing the writ of error, "We fail to see that any title, right, privilege, or immunity of a Federal nature was specially set up and claimed."

The same is true in the case at bar. Furthermore, in the trial court the application of the maxim that "he who

comes into equity must come with clean hands" was not at all suggested. The phrase "unclean hands" was not once used in the trial court.

In the stipulation regarding the printing of the record herein there is the following language [R. 2]:

> "It Is Further Stipulated and Agreed that respondent, in entering into this stipulation, concerning the matter to be included in the printed record herein, does not admit that any federal question is involved herein; neither does respondent by this stipulation, or otherwise, admit that any federal question was presented, claimed, or suggested either in the trial court or in the Supreme Court of California.
>
> *It Is Further Stipulated that there is nothing in those portions of the record presented to the Supreme Court* [fol. 3] *of California which are to be omitted from the record herein, nor in the briefs of counsel filed in the Supreme Court of California, presenting, assigning, or arguing any federal question."*

The foregoing stipulation accords with the fact that no federal question was presented, assigned, or argued either in the briefs filed in the Supreme Court of California or in any of the proceedings not made a part of the record in this court. The petition herein absolutely fails to point out in the record anything purporting to show that a federal question was claimed or suggested in the California courts. No federal question was ever raised or suggested by petitioners, in any manner or form whatsoever, prior to the filing of this petition in this court.

III.

The Question Presented Is Unsubstantial and Frivolous.

Respondent is unable to conceive of a more frivolous and unsubstantial question than that which petitioners present in the case at bar. The absence of a *federal* question and the absence of the *assertion* of a federal question in the California courts are equally conspicuous. As a matter of fact, the question of *local* law presented to the Supreme Court of California was frivolous and unsubstantial in the light of the decisions cited by that court. In view of the rather obvious correctness of the ruling of the trial court, the disposition of petitioners' contentions on appeal by the Supreme Court may aptly be described as tolerant.

Applicable to the present petition is the following language of this court from the decision in *Consolidated Turnpike Co. v. Norfolk & Ocean View Rwy. Co.*, 228 U. S. 596, 603:

> "The claim that in thus holding and deciding the court below denied to the plaintiffs in error due process of law under the 14th amendment is neither real nor substantial, but so entirely without merit as to justify this court in refusing to take jurisdiction."

IV.

The Case Presented Is Not One Involving a Matter of Such Public or General Importance as to Warrant Granting the Discretionary Writ.

Not only is it obvious that there is no merit in petitioners' claim of error in the rulings of the California courts, but it is equally apparent that petitioners have presented no case of great public or general importance. It may be granted that the results of the litigation are important to the parties litigant, but this assumption would not be sufficient to entitle petitioners to the issuance of the discretionary writ which they seek.

Conclusion.

Respondent submits that not only have petitioners failed to present any federal question, or to show that any federal question was claimed in the California courts, but also that it *affirmatively* appears that no federal question was involved or asserted. Furthermore, the question sought to be presented is unsubstantial, frivolous, and wholly without merit. Therefore, it is submitted that the writ should be denied.

Respectfully submitted,

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